

## **A GUIDE**

### **For CIVIL PRACTICE Before**

#### **THE HONORABLE WILLIAM M. SKRETNY**

**United States District Judge**

**Western District of New York**

## **I. INTRODUCTION**

The following guidelines are intended to aid the Bar in civil practice before Judge Skretny. These guidelines are not intended to govern civil practice before other judges in the Western District of New York. Additionally, these guidelines are not intended to supersede the Federal Rules of Civil Procedure ("Federal Rules") or the Rules of Civil Procedure of the United States District Court for the Western District of New York (effective May 1, 2003) ("Local Rules"), all of which remain in full force and effect.

All papers should conform to Local Rule 10 in form and content. Counsel are reminded that Federal Rule 11 as amended (effective August 1, 1983, amended December 1, 1993) imposes affirmative requirements upon the counsel who signs any pleading or other paper in an action.

Before any motions are filed and/or served, Judge Skretny requires that counsel call the Courtroom Deputy to schedule hearing of the motion. Judge Skretny also requires courtesy copies of all filings.

## **II. SCHEDULING AND DISCOVERY**

In scheduling and discovery matters, it is the policy of Judge Skretny, except in limited circumstances, to utilize the services of the United States Magistrate Judge to the fullest extent possible under 28 U.S.C. §636 and the Local Rules 72.1 and 72.2.

### **A. Scheduling**

#### **1. Preliminary Pretrial Conference**

Once Judge Skretny refers a case to a Magistrate Judge, the Magistrate Judge will contact the parties and hold a preliminary pretrial conference in accordance with Local Rule 16.1(c). The purpose of this pretrial conference will be not only to set times for the completion of discovery and trial, but to discuss any other matter relevant to the prompt disposition of the case.

**(2003)**

At this conference, each counsel is expected to have sufficiently evaluated the case to:

- a. Meaningfully discuss settlement;
- b. Inform the Magistrate Judge of necessary discovery and the time needed to complete such discovery;
- c. Inform the Magistrate Judge of the then best approximation of time needed to try the case.

2. Scheduling Order

After the preliminary pretrial conference the Magistrate Judge will issue an Order setting forth:

- d. The date by which all discovery must be completed;
- e. The last date any non-dispositive pretrial motions may be filed before the Magistrate Judge;
- f. The last date any dispositive motions may be filed before Judge Skretny or the Magistrate Judge, depending upon who has dispositive trial jurisdiction in the case; and
- g. The scheduled dates for dispositive motions and settlement conference.
- h. The tentative scheduled date for trial.

**THESE DATES MAY NOT BE EXTENDED BY AGREEMENT OF COUNSEL. EXTENSIONS WILL BE GRANTED, FOR GOOD CAUSE SHOWN, ONLY UPON MOTION TO JUDGE SKRETNY OR TO THE MAGISTRATE JUDGE, WHOEVER HAS DISPOSITIVE TRIAL JURISDICTION IN THE CASE.** Should counsel find it necessary to file such a motion, he or she first should contact opposing counsel for consent. If such consent is obtained, moving counsel must file a "consent motion" representing that consent has been obtained and specifying good cause for the motion.

B. Discovery

Once Judge Skretny has referred a case to a Magistrate Judge, all subsequent discovery motions must be made directly to the Magistrate Judge.

1. Local Rule 37

Counsel are reminded that Local Rule 37 **MUST** be followed before a discovery motion is made. This Rule requires the moving party to submit with its discovery motion a written affidavit stating that sincere attempts to resolve the discovery dispute have been made, detailing the time and place of the meetings and correspondence or discussions concerning the discovery disputes. Counsel are reminded that Federal Rules 26-36 are generally broadly construed and neither Judge Skretny nor a Magistrate Judge will hesitate to impose sanctions under Federal Rule 37 for abuse of discovery.

2. Limits on Interrogatories

Except as otherwise ordered by Judge Skretny, interrogatories propounded by parties in cases before Judge Skretny shall not exceed twenty-five (25) in number.

C. Referrals

Once Judge Skretny has referred all non-dispositive motions pursuant to 28 U.S.C. § 636(b)(1)(A) for decision and order and/or dispositive motions to a Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) for report and recommendation, all such subsequent motions must be made directly to the Magistrate Judge.

**III. MOTIONS**

In addition to scheduling and discovery matters, Judge Skretny will refer various non-dispositive motions for decision and order or dispositive motions for report and recommendation to a Magistrate Judge. In the case of dispositive motions, the Magistrate Judge will be directed to conduct hearings, take testimony, hear arguments and submit proposed findings of fact and recommendations to Judge Skretny pursuant to 28 U.S.C. §636(b)(1)(B). Upon referral of the matter, a Magistrate Judge will notify the parties concerning scheduling.

Motion Practice Before Judge Skretny

Motion papers filed with Judge Skretny must comply with Local Rules 7.1 and 10.

1. Motion Days

Motion days for Judge Skretny are Monday through Friday. **Counsel must contact Judge Skretny's Courtroom Deputy to schedule a return date and/or oral argument date before filing and serving papers.**

2. Motion Papers

As outlined below, Local Rule 7.1(c) sets forth the time requirements for filing and serving motion papers.

A moving party who wishes to file reply papers shall file and serve the notice of motion and supporting papers at least fifteen (15) business days prior to the return date of the motion.

The notice of motion shall also state that the moving party intends to file and serve reply papers and that the opposing party is therefore required to file and serve opposing papers at least eight (8) business days prior to the return date.

Reply papers shall be filed and served at least three (3) business days before the return date.

Under all other circumstances, and except as ordered otherwise by the Court, notices of motion together with supporting affidavits and memoranda shall be served on the parties and filed with the Clerk at least ten (10) business days prior to the return date of the motion.

Answering affidavits and memoranda shall be served and filed at least three (3) business days prior to the return date.

Sur-reply papers shall not be permitted unless a party is directed otherwise by the Court.

**Counsel are not to submit letters, affidavits or briefs containing additional authority or additional argument subsequent to this Court deeming the matter submitted, unless specifically authorized by Judge Skretny.**

Counsel should adhere to these requirements unless Judge Skretny issues a superseding scheduling order.

Failure to file timely opposing or reply papers may result in an adverse ruling, denial of a request to file such papers, or the imposition of sanctions against offending counsel.

3. Memorandum of Law

On all dispositive motions, parties must submit a memorandum of law in support of their respective motion or response. Failure to submit a memorandum of law to Judge Skretny will delay the disposition of the motion. Judge Skretny may, on other occasions, require that memoranda of law be submitted with respect to a particular matter before the Court. The parties are not to supplement memoranda of law by unsolicited letters to the Court. All supplemental papers shall be filed with the Clerk of the Court and served, or they will not be considered by Judge Skretny.

4. Memoranda/Page Limitations

Memoranda supporting or opposing a motion are limited to twenty-five (25) pages in length. Reply memoranda are limited to ten (10) pages in length. Pursuant to Local Rule 7.1(f), applications to exceed these page limits shall be made in writing by letter to the Court with copies to all counsel prior to the due date. The Court may refuse to consider memoranda that fail to comply with these limitations. All memoranda must contain parallel citations.

5. Cross-Motions

Cross-motions must be filed and served simultaneously with papers in opposition to the original motion. Responses must be filed and served simultaneously with the reply to the original motion. If a reply to the original motion was not contemplated, Judge Skretny will issue a scheduling order.

6. Proposed Orders

Counsel may be required to submit a proposed order for consideration by Judge Skretny with motion papers.

7. Motion Scheduling

To the extent possible, Judge Skretny will hear motions on the return dates originally scheduled. However, if it becomes necessary for Judge Skretny to adjourn the motion to another date, the Courtroom Deputy will notify each party of any such change as far in advance of the original return date as possible.

8. Adjournments

All adjournments and extensions of time must be requested by written motion and require a showing of good cause. Parties seeking an adjournment or extension should first contact the opposing parties to obtain their consent. If all parties consent, the party seeking the adjournment or extension shall file with the Clerk of

the Court and serve its motion with an affidavit indicating that all parties have consented and setting forth the reason the adjournment or extension is being sought. A return date, if necessary, will be set by the Court upon receipt of the motion.

If the moving party cannot obtain the consent of the opposing parties, the moving party shall contact the Courtroom Deputy for a return date and include the return date in its motion.

Nunc pro tunc requests for adjournment or extensions will be considered by the Court only in extraordinary circumstances.

Letters or telephone calls requesting adjournments or extensions will not be considered by the Court. Only motions will be considered, including consent motions.

**EXCEPT IN EMERGENCY SITUATIONS, DO NOT CONTACT THE JUDGE'S LAW CLERKS TO REQUEST AN ADJOURNMENT.**

9. Personal Appearances

On all motions returnable before Judge Skretny, counsel in support of and opposing the motion must appear before Judge Skretny on the motion return date, or other date Judge Skretny has set for the motion to be heard.

10. Oral Argument

Counsel desiring oral argument should so request in their motion papers. Such request must contain a statement estimating the amount of time counsel requires for argument. It is Judge Skretny's practice, except when the nature of the motion dictates otherwise, to allot no more than fifteen minutes per party for oral argument. Judge Skretny may notify the parties that oral argument will not be heard on any motion and that the motion is deemed submitted.

Oral argument will begin promptly at 9:00 a.m. or as otherwise scheduled. When oral argument has been requested, counsel for each party must appear to argue the motion or must notify the Courtroom Deputy that, by mutual consent of the parties, the request for oral argument has been withdrawn. The motion will then be submitted.

11. Emergency Motions and Ex Parte Applications

Ex parte applications are not favored by Judge Skretny and should be avoided except in the most extreme circumstances. Where such cases arise, the party submitting the application must state in the application either (1) that the party has

contacted opposing counsel and attempted to resolve the situation through normal motion practice or (2) the reasons why contacting the opposing party would be inappropriate under the circumstances. **When moving for a temporary restraining order counsel are reminded to consult Federal Rule 65.**

#### **IV. CONSENT TO TRY CASE BEFORE MAGISTRATE JUDGE**

28 U.S.C. §636(c) and the Local Rules authorize a United States Magistrate Judge to try any civil case -- jury or non-jury -- if the parties consent. Judge Skretny encourages the parties to consider this option because, among other reasons, an early trial date may more easily be scheduled. At or about the time an action is commenced, when a Magistrate Judge is presiding over initial scheduling matters, the Magistrate Judge will notify the parties of this option. The parties may elect to consent to trial by a Magistrate Judge at any time during the proceedings; however, Judge Skretny encourages the parties to so elect as soon as possible so that the case may proceed to trial absent interruption. Appeal from a Magistrate Judge lies either to the District Court or directly to the Court of Appeals.

#### **V. STATUS CONFERENCES**

It is the policy of Judge Skretny to take an active role in the management of each case on the docket. From time-to-time, at the request of a party or on Judge Skretny's own initiative, a status conference will be held to discuss the progress of the case and the possibility of settlement. Counsel should be prepared to discuss the topics listed in Item II herein (SCHEDULING AND DISCOVERY) at such conferences.

##### **A. Local Rule 16.1(f) Status Conference**

After discovery has been completed, a status conference will be scheduled. The primary purpose of this conference will be to ensure compliance with Local Rule 16.1(d) and its pretrial statement requirement. Counsel will receive a letter or order advising them of the date and time of the conference.

B. Settlement Status Conference

Judge Skretny encourages the parties to settle cases without trial whenever possible. Judge Skretny will schedule settlement conferences as a matter of course. Additionally, counsel who request the Judge's assistance in settling a matter are encouraged to contact the Courtroom Deputy who will schedule a status conference as time permits. SUCH REQUESTS WILL RECEIVE A SCHEDULING PREFERENCE.

**VI. FINAL PRETRIAL CONFERENCE**

Approximately one month before trial is scheduled to commence, or as otherwise directed, Judge Skretny will conduct a final pretrial conference in accordance with Local Rule 16.1(f). However, in complex cases Judge Skretny may conduct such a final pretrial conference in segments during the weeks before trial. Issues to be discussed at this conference, as set forth more fully in Judge Skretny's final pretrial letter, include jury selection, witnesses, uncontroverted facts, exhibits, evidentiary issues, proposed jury charges and any other matters which would simplify or expedite the trial.

All motions in limine must be filed and served by the pretrial submission deadline indicated in Judge Skretny's final pretrial letter. The decision whether to file a motion in limine is committed to the discretion of counsel; however, such a motion should be made if resolution of the issue would require more than a de minimis amount of time during trial.

Additionally, one day before trial is scheduled to commence, or as otherwise directed, Judge Skretny will conduct a final status conference at which time any matters pertinent to a final disposition of the case will be discussed, including, but not limited to, any further stipulations between the parties and the possibility of settlement of the case.

Any failure of counsel to be prepared at any final pretrial conference absent good cause may result in sanctions. Counsel who will be trying the case must attend the conference -- not a substitute.

**VII. JURY TRIAL AND JURY SELECTION DATES**

To the extent possible, Judge Skretny will schedule jury trials to begin on Tuesdays, with jury selection to begin at 9:30 a.m., or at a time consistent with the jury utilization needs of the Judges and Magistrate Judges on that day.



## **JUDGE SKRETNY'S STAFF**

United States Courthouse  
68 Court Street  
Buffalo, New York 14202

<u>Room</u>		<u>Telephone</u>
Part IV 5th Floor	Courtroom	
507	Judge Skretny	551-3086
507	Court Secretary Jennifer C. Dzielski	551-3086
507	Law Clerks	551-3086
507	Courtroom Deputy Mary E. Labuzzetta	551-3108
507	Facsimile	551-3125
508	U.S. Court Reporter Michelle McLaughlin	332-3560
304	Court Clerk's Office Open Monday through Friday 9:00 a.m. to 5:00 p.m. for filing documents.	551-4211